

FACTUAL HISTORY

This case was previously before the Board.³ By decision dated October 19, 2011, the Board affirmed a December 23, 2010 OWCP decision, which denied as modified to find insufficient medical evidence to establish that appellant sustained neck or bilateral shoulder conditions as a result of his employment activities. It also affirmed a January 27, 2011 nonmerit decision which denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a). By order dated April 25, 2012, the Board denied appellant's petition for reconsideration of its October 19, 2011 decision.⁴ The facts of the case, as set forth in the prior decision, is hereby incorporated by reference.

On May 22 and June 13, 2012 appellant submitted requests for reconsideration. He notes that he took medicine for his shoulder conditions and that any repetitive motion to his shoulder worsened his condition. Appellant noted that he was submitting a report from Dr. William Garth, Jr., a Board-certified orthopedic surgeon, who diagnosed thoracic outlet syndrome and indicated that one of the causes was repetitive activity.

Appellant submitted the handwritten notes of Dr. Garth, dated July 17, 2006 to October 13, 2010. He noted that appellant was treated for right and left shoulder pain and thoracic outlet syndrome. The record reflects that Dr. Garth was the physician who performed appellant's August 1, 2007 right shoulder surgery for shoulder impingement syndrome with a partial tear of the supraspinatus tendon. Appellant underwent an arthroscopically-aided acromioplasty with distal clavicle resection and repair of the supraspinatus portion of the rotator cuff.

By decision dated October 11, 2012, OWCP denied appellant's request for reconsideration finding that the evidence submitted was not sufficient to warrant further merit review under 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.⁵ OWCP's regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his right through a request to the district Office.⁶

³ Docket No. 11-790 (issued October 19, 2011). On November 5, 2010 appellant, then a 57-year-old mail handler, filed a claim alleging that on October 19, 2010 he sustained neck and bilateral shoulder conditions as a result of repetitively prepping mail. In a decision dated December 23, 2010, OWCP denied his claim finding insufficient medical evidence to establish that he sustained any diagnosed bilateral shoulder or neck condition as a result of his employment. By decision dated January 27, 2011, OWCP denied appellant's request for reconsideration finding that no evidence was submitted sufficient to warrant further merit review under 5 U.S.C. § 8128.

⁴ Docket No. 11-790 (issued April 25, 2012).

⁵ 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁶ 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁷

A request for reconsideration must also be submitted within one year of the date of OWCP's decision for which review is sought.⁸ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁹ If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁰

ANALYSIS

The Board's prior decision of October 19, 2011 reviewed the December 23, 2010 merit decision. In this appeal, the only decision the Board may review is the October 11, 2012 nonmerit decision denying appellant's request for reconsideration. The issue is whether appellant's request met at least one of the three requirements for obtaining a merit review. The Board finds that appellant's May 22 and June 13, 2012 requests for reconsideration did not satisfy any of the requirements of 20 C.F.R. § 10.606(b).

Appellant submitted various handwritten notes and a 2007 surgical report by Dr. Garth pertaining to treatment for bilateral shoulder impingement and thoracic outlet syndrome. The Board finds that the reports are cumulative and duplicative of the medical evidence previously submitted regarding treatment for appellant's bilateral shoulder impingement and neck pain. Evidence that repeats or duplicates evidence already of record has no evidentiary value and does not constitute a basis for reopening a case.¹¹ These reports, therefore, are insufficient to warrant further merit review.

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by OWCP; and he has not submitted relevant and pertinent new evidence not previously considered by OWCP. OWCP did not abuse its discretion in refusing to reopen his claim for a review of the merits.

On appeal, appellant stated that in May 2012 he submitted a new October 2008 report by Dr. Garth with a diagnosis of thoracic outlet syndrome or neck pain. A review of the record demonstrates, however, that this report was previously submitted and reviewed by OWCP.

⁷ *Id.* at § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁸ *Id.* at § 10.607(a).

⁹ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁰ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹¹ *D.K.*, 59 ECAB 141 (2007); *Howard A. Williams*, 45 ECAB 853 (1994).

Appellant's claim was denied as failed to submit sufficient medical evidence to establish his shoulder conditions were related to his work as a mail handler. He did not submit any evidence or advance any legal arguments along with his request for reconsideration that satisfied the regulatory criteria necessary to reopen a case for merit review.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP did not abuse its discretion by denying appellant's May 22 and June 13, 2012 requests for reconsideration pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the October 11, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board